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EXAMINER

JACKSON, ANDRE K

ART UNIT

PAPER NUMBER

2856

DATE MAILED: 07/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/070,384

Applicant(s)

VISSER, CORNELIS F.T. 

Examiner

André K. Jackson

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9 and 13-16 is/are rejected.
- 7) ☒ Claim(s) 7, 10-12 and 17-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the table must be shown or the features canceled from the claims. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claims 1,2 and 5 are objected to because of the following informalities:

Regarding claim 1, a --colon-- is needed after comprising.

Regarding claim 2, a --colon-- is needed after comprising.

Regarding claim 5, line 2 "comp rises" should be --comprises--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by Oetiker et al.

Regarding claim 4, Oetiker et al. discloses a “Process and device for continuously determining the moisture content of spoilable foodstuffs” which has a supply vessel (16, measurement housing) placed on a weighing device (17, 2), a feed device (70, compartment), a discharge device (23, product outlet), and a computer (9).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hane.

Regarding claim 1, Hane discloses a “Method for measuring the moisture ratio of organic material and apparatus herefor” where the volume of a quantity of bulk material is determined (Column 2, lines 33-

35), the weight of the quantity of the bulk material is determined (Column 1, lines 40 and 41), the density is then determined from the volume and the weight (Column 6, lines 60-65). What is not disclosed is determining the moisture content with a comparison table. However, it is well within the purview of the skilled artisan to use the method taught by Hane et al. and compare the result to a table to establish the accuracy of the method used.

7. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hane in view of Cherry et al.

Regarding claim 2, Hane discloses where the volume of a quantity of bulk material is determined (Column 2, lines 33-35) and the weight of the quantity of the bulk material is determined (Column 1, lines 40 and 41). What is not disclosed by Hane is adding water to the quantity of bulk material until the weight associated with the desired moisture content is obtained. However, Cherry et al. disclose a "System and method for monitoring water content or other dielectric influences in a medium" which describes adding water to the quantity of bulk material until the weight associated with the desired moisture content is obtained (Column 13, lines 21-26). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify Hane to include adding water to the quantity of bulk material until the weight associated with the desired

moisture content is obtained as taught by Cherry et al. since they are from the same field of endeavor.

Regarding claim 3, Hane does not disclose mixing the water with the bulk material. However, Cherry et al. disclose mixing the water with the bulk material (Column 13, lines 21-26). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify Hane to include mixing the water with the bulk material as taught by Cherry et al. since mixing would distribute the water evenly.

8. Claims 5,6,9 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oetiker et al. in view of Bajema et al.

Regarding claim 5, Oetiker et al. disclose a feed device, which does not comprise a conveyor belt. However, Bajema et al. disclose a "Ground-crop harvester control system" which has a feed device, which does comprise a conveyor belt (20), a height sensor (abstract) and a computer (controller 100). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify Oetiker et al. to include a conveyor as a feed device, a height sensor and a computer as taught by Bajema et al. This addition would make it easier to transport the bulk material since the material may become stuck in the feed device of Oetiker et al.

Regarding claim 6, Oetiker et al. does not disclose where the measuring member comprises a laser source and a laser detector to

determine the height of the material carried on the conveyor. However, Bajema et al. disclose where the measuring member comprises a laser source and a laser detector to determine the height of the material carried on the conveyor (Column 11, lines 55-67). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify Oetiker et al. to include where the measuring member could comprise a laser source and a laser detector to determine the height of the material carried on the conveyor as taught by Bajema et al. since this would make the measuring member more accurate.

Regarding claims 9 and 13-16, it is considered a design choice and well within the purview of the skilled artisan to have a supply vessel that is tiltable to ensure that all of the material is out of the vessel.

9. Claims 7, 10-12 and 17-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments filed 05/05/03 have been fully considered but they are not persuasive.

Applicant has stated that the last Office Action has "impermissibly" picked and chose from two background references to justify the rejections.

The information disclosed in the references is deemed prior art even if it is from the background of the invention. Therefore to "pick and choose" is acceptable since the background of the invention is considered prior art. Applicant seems to be suggesting that the only information that can be used in a rejection is from the invention itself i.e. summary, drawings and claims and not anything from the background or prior art sections of the patent.

Applicant argues that Hane is not patentable over claim 1. The claim calls for determining the volume of a quantity of bulk material; determining the weight of the quantity of bulk material; determining the specific density; and determining the moisture content by comparison with a table. Hane discloses determining the volume of a quantity of bulk material (Column 2, lines 33-35); determining the weight of the quantity of bulk material (Column 1, lines 40-41) and determining the specific density (Column 6, lines 60-65) are all well known in the art. Determining the moisture content by comparison with a table is well within the purview of the skilled artisan to establish the accuracy of the method used.

Applicant argues that Cherry does not teach the limitation associated with claim 2. However, Cherry was used to show that it is possible to add water to the quantity of bulk material until the weight associated with the desired moisture is obtained (Column 3, lines 15-29) which is claimed in claim 2.

Applicant states that Bajema does not disclose a system related to an apparatus for measuring moisture content. The claim does not require a measurement of moisture only a conveyor with a measuring member for measuring the height of the bulk material carried along the conveyor and a computer. Bajema does disclose this device for the use with bulk material and a concern for moisture measurement (Column 8).

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 2856

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to André K. Jackson whose telephone number is (703) 305-1522. The examiner can normally be reached on Mon.-Thurs. 7AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (703) 305-4705. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1782.

A.J. 
July 8, 2003

HELEN KWOK
PRIMARY EXAMINER

